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APPLICATION OF

**VIRGINIA ELECTRIC AND POWER
COMPANY**

CASE NO. PUE000584

**For approval of a Functional Separation
Plan under the Virginia Electric Utility
Restructuring Act**

HEARING EXAMINER'S RULING

August 1, 2001

On July 19, 2001, counsel for the Virginia Cable Telecommunications Association ("VCTA") filed a Motion to Compel ("Motion") Virginia Electric and Power Company ("Dominion Electric Power" or the "Company") to respond to certain discovery requests made by the VCTA.

On July 25, 2001, the Company filed a Response wherein it claims the Company should not be required to respond further to data requests by VCTA because the information sought is irrelevant to the functional separation of electric generation assets and services, and the requests are not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Company asserts that VCTA seeks information concerning the Company's relationship with its telecommunications affiliate, Dominion Telecom, Inc. ("DTI"), an entity unrelated to the provision of electric generation services. Further, the Company argues that VCTA's questions pertaining to pole attachment rates and the sharing or leasing of fiber optics and conduits, ducts or rights-of-way for any wire telecommunications are unrelated to any matter that reasonably could lead to the discovery of admissible evidence related to the promotion of competition for generation services or the provision of capped rate or default service.¹

VCTA filed a Reply to the Company's Response on July 27, 2001.

5 VAC 5-20-260 states:

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved. . . It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

I find the Company should answer the interrogatories filed by VCTA. The rule pertaining to discovery is very broad, allowing for the discovery of any information that appears reasonably calculated to lead to the discovery of admissible evidence. Generally speaking, the interrogatories objected to by the Company pertain to pole attachments, sharing or leasing of

¹ Response at 4.

fiber optics and conduits, ducts or any rights-of way for any wire telecommunications. While it is true that the Commission does not regulate prices for these telecommunications capabilities controlled by the Company, it does generate income for the Company that is factored into cost of service studies. Commission Rule 20 VAC 5-202-40.B(7) requires the incumbent utilities to submit class cost of service studies. The Restructuring Act and the rules promulgated therefrom require the proper allocation of costs to the distribution function.² It is entirely feasible that the questions posed by VCTA could lead, directly or indirectly, to information pertinent to class cost of service determinations. Therefore, I find the interrogatories could provide or lead to information relevant to this proceeding

I further find that the basis for the Company's objections does not outweigh the potential probative value of the information requested. First, DTI, although an affiliate of Dominion Electric Power, will pay for the telecommunications facilities leased and should be treated as any other telecommunications company requesting use of the Company's facilities. Second, although some of the information requested in the interrogatories is of public record, time is of the essence and the information should be readily accessible by the Company. Third, if any of the information requested in the interrogatories is considered work product or subject to an attorney/client privilege, a specific objection should be made to the interrogatory. The Company has not provided a sufficient basis or foundation to support a finding that any answers requested would violate the attorney/client privilege or would constitute protected work product. Accordingly,

IT IS DIRECTED THAT:

- (1) The Motion to Compel is granted; and
- (2) The Company shall answer the interrogatories within five business days of the filing of this Ruling.

Howard P. Anderson, Jr.
Hearing Examiner

² Section 56-590 D 1 of the Code of Virginia requires the Commission to promulgate rules and regulations prohibiting cost-shifting or cross-subsidies between functionally separate units.